

BEFORE THE
STATE BOARD OF PHARMACY
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY,)	
)	
Petitioner,)	
)	
v.)	Case No. 2004-006460-F1
)	
Jeffrey C. Barnes, R.Ph.,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE**

This matter appears before the Missouri Board of Pharmacy pursuant to a Felony Conviction Complaint regarding Jeffrey C. Barnes, R.Ph, Respondent.

Findings of Fact

1. The Board set this matter for hearing and served notice of the disciplinary hearing upon Barnes.
2. Pursuant to notice and Section 621.110, RSMo, this Board held a hearing on February 7, 2007, at the Courtyard by Marriott, 3301 LeMone Industrial Boulevard, Columbia, Missouri, for the purpose of determining the appropriate disciplinary action against the pharmacist license of Barnes. Barnes appeared in person and with counsel Donald E. Heck. The Board was represented by Robert Angstead.
3. Board members that were present throughout the disciplinary hearing were Douglas Lang, President; Gary Sobocinski; Elaina Wolzak; Pamela Marshall; Anita K. Parran; and Melissa Graham. All members except for Mr. Sobocinski participated in the decision of the Board that is reflected in this Order.

4. The Missouri Board of Pharmacy ("Board") is an agency of the state of Missouri created and established pursuant to Section 338.110, RSMo 2004, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

5. Barnes was licensed by the Board, License No. 040958, which license was current and active throughout the period.

6. On or about August 18, 2006, Barnes was found guilty of one count of stealing by deceit of at least five hundred dollars, a Class C felony in violation of Section 570.030, RSMo; and thirteen (13) counts of causing to be made a false statement to receive health care payments, Class D felonies in violation of Section 191.905, RSMo in the Circuit Court of Pike County, Missouri. Barnes' attorney requested that the proceedings be held open until such time as he obtained a transcript of the criminal proceedings. See pages 13 and 14 of the transcript. Barnes did not file such a transcript of the criminal proceedings.

7. Pursuant to 338.065, RSMo, the Missouri Board of Pharmacy set this matter for hearing and served notice of a disciplinary hearing upon Respondent in a proper and timely fashion.

8. The Board finds that the crimes to which Barnes was found guilty in a criminal case are offenses reasonably related to the qualifications, functions or duties of a pharmacist and that these felony offenses have an essential element of which is fraud, dishonesty or involves moral turpitude.

Conclusions of Law

9. This Board has jurisdiction over this proceeding pursuant to 338.065, RSMo. Mr. Barnes filed a Motion to Stay the Proceedings, along with Suggestions in Support, and the Board's attorney filed a Memorandum in Opposition. The Board incorporates by reference those pleadings into this Order, considered the motion filed by Respondent, and denies that motion. The provisions of Section 338.065, RSMo, refer to the "final trial proceedings", while the provisions in Section 338.055.2 (2), RSMo, refer to proceedings that are "finally adjudicated" and, therefore, different meanings must be placed upon those

two provisions. The Board determines that it has the authority to proceed with a felony hearing under Section 338.065 while an appeal is pending of the criminal conviction because the language in that section refers to "final trial proceedings." On January 15, 2008, the Eastern District Court of Appeals affirmed Barnes' conviction, remanding the case for new sentencing. See Barnes, et. al v. State of Missouri, ED 88792. On February 19, 2008, that court denied Barnes' motion for rehearing and Barnes did not file any appeal to the Missouri Supreme Court. Therefore, Barnes' motion that the Board delay this Order is moot because his appeals of his criminal conviction are exhausted.

10. Respondent's license is subject to discipline by this Board pursuant to 338.065, RSMo.

11. Upon examination of the evidence presented, the Missouri Board of Pharmacy concludes that Barnes was found guilty in a criminal case to offenses reasonably related to the qualifications, functions or duties of a pharmacist and that these felony offenses have an essential element of which is fraud, dishonesty or involves moral turpitude.

Order

IT IS HEREBY ORDERED by the Missouri Board of Pharmacy that the pharmacist license issued to Jeffrey C. Barnes, numbered 040958, shall be suspended for two (2) years, followed by five years (5) probation, subject to the terms set forth below.

I. The following terms and conditions shall govern Respondent's periods of suspension and probation.

1. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

2. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

3. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

5. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

6. The Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 338, 610, 620, RSMo.

7. If, after disciplinary sanctions have been imposed, the Respondent ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed. If, after disciplinary sanctions have been imposed, the Respondent begins employment as a pharmacist or technician outside the state of Missouri, such periods of time shall not included as part of the time of discipline imposed in this Order. Respondent may petition the Board to seek a waiver for any portion of this requirement by making such a request in writing to the Board for its consideration. No exception can be made to this requirement without prior approval of the Board. If the Respondent leaves the state of Missouri for more than thirty (30) consecutive days, such periods of time shall not included as part of the time of discipline imposed in this Order.

8. Respondent shall not serve as a preceptor for interns.

9. Respondent shall provide all current and future pharmacy and drug distributor employers and pharmacist/manager-in-charges a copy of this disciplinary Order within five (5) business days of the date of this Order or the beginning date of each employment. If at any time Respondent is employed by a temporary employment

agency he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this disciplinary order prior to or at the time of any scheduled work assignments.

10. Respondent shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

11. Respondent shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state and federal registrations for the purpose of storing, distributing or dispensing controlled substances.

12. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months, beginning six (6) months after the date of this Order, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary Order.

13. Should Respondent violate any term or condition of this disciplinary Order or any provision of Chapter 338, RSMo, the Board of Pharmacy may vacate the Order of discipline imposed herein and order such further or additional discipline as the Board deems appropriate, including, but not limited to, revocation, suspension, and/or probation against the pharmacy permit of Respondent. No additional order shall be entered by this Board pursuant to this paragraph of this Order without notice and an opportunity for hearing before the Board of Pharmacy as a contested case in accordance with the provisions of Chapter 536, RSMo.

14. Upon the expiration of the period of discipline, Respondent's license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Order, or any provision of Chapter 338, RSMo, the Board, may in its discretion, vacate and set aside the terms and conditions of this Order and order such further or additional discipline as the Board deems appropriate.

15. If the Board determines that Respondent has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

II. The following terms and conditions shall govern Respondent's period of suspension:

16. Respondent shall not engage in any activity or conduct in the State of Missouri for which a license as a pharmacist or a registration as a pharmacy technician is required.

17. Respondent shall not be physically present in a pharmacy during suspension except as a bona fide customer. Respondent may, however, be employed at a facility that maintains a pharmacy, so long as that employment does not include the practice of pharmacy, require registration as a pharmacy technician, or require and/or permit Respondent's physical presence within the licensed (permit) area of the facility.

18. Respondent shall not use the term "R.Ph.", "Pharmacist", or any other title or designation which would signify that Respondent can legally practice pharmacy, in either printed or verbal form, during the suspension period.

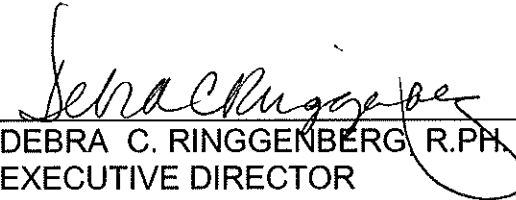
19. Respondent shall return all indicia of licensure, i.e., the original wall-hanging certificate, the computer generated 5" x 7" license, and the wallet card, to the Board office on or before the effective date of suspension. The licenses will be returned to Respondent at the end of the suspension period.

20. Respondent shall take and pass the Board's designated jurisprudence (law) examination during the second year of suspension. Respondent shall register to take the Multistate Pharmacy Jurisprudence Examination (MPJE) online at the National Association of Boards of Pharmacy (NABP) website, www.nabp.net no less than ninety days prior to the date Respondent desires to take the examination. Respondent shall complete the registration materials and submit them and the required fee to NABP. If Respondent is unable to obtain the registration materials online Respondent shall contact the NABP office

for the required registration materials. Upon Respondent's receipt of an Authorization to Test (ATT), Respondent shall schedule the exam as instructed. If necessary, Respondent will be given three opportunities to take and pass the examination. To prepare for the examination Respondent shall access the Board's website to review the laws and regulations. Respondent shall bear all costs involved in taking the examination.

ENTERED THIS 11th DAY OF MARCH, 2008

(BOARD SEAL)


DEBRA C. RINGGENBERG R.PH.
EXECUTIVE DIRECTOR
MISSOURI BOARD OF PHARMACY